

AMENDED IN ASSEMBLY JUNE 19, 2001
AMENDED IN ASSEMBLY MAY 22, 2001
AMENDED IN ASSEMBLY MAY 16, 2001
AMENDED IN ASSEMBLY MAY 2, 2001
AMENDED IN ASSEMBLY APRIL 2, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 224

Introduced by Assembly Members Matthews and Migden
(Coauthors: Assembly Members Cedillo, Koretz, Nation,
Richman, and Steinberg)
(Coauthor: Senator Kuehl)

February 13, 2001

An act to amend Sections 30123 and 30131.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 224, as amended, Matthews. Sales and use taxes: cigarette and tobacco products.

Existing law provides for various programs for the reduction in the inappropriate use of cigarettes and tobacco products.

This bill would make legislative findings and declarations that with the enactment of Proposition 99 there has been a proliferation of smokeless tobacco products and a shift from adults to children, primarily teenage boys.

This bill would require the office of the Legislative Analyst to conduct a study of the sales and marketing of cigars and smokeless tobacco products to both adults and children. This bill would set forth some specific inquiries to be addressed in the study. The results of the study would be required to be submitted to the Legislature by December 31, 2002.

~~Existing law requires the State Board of Equalization to annually determine the surtax imposed on tobacco products, other than cigarettes, at a rate equivalent to that surtax rate imposed on cigarettes.~~

~~This bill would make legislative findings and declarations that there has been a shift in the use of smokeless tobacco from adults to children, primarily teenage boys. This bill would make further findings that the current methodology for determining the equivalent surtax rate for smokeless tobacco products is flawed and results in disparate tax rates imposed on similar products. This bill would, in conformance with the Legislature's intent to eliminate this disparity and to discourage the use of these products by children, require the State Board of Equalization to develop a separate equivalent rate for the surtax on smokeless tobacco products.~~

~~The Tobacco Tax and Health Protection Act of 1988, an initiative measure, and the California Families and Children Act of 1998, another initiative measure, each require that amendments to their provisions be consistent with the act's purposes, and be approved by either a $\frac{4}{5}$ or $\frac{2}{3}$ vote of both houses of the Legislature.~~

~~This bill would declare that it amends those measures in a manner that furthers and is consistent with the purposes of those measures, and would require a $\frac{4}{5}$ vote of each legislative house for passage.~~

~~This bill would take effect immediately as a tax levy.~~

~~Vote: $\frac{4}{5}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Proposition 99 was adopted by the California electorate in
- 4 November of 1988 to impose a surtax on cigarettes and other
- 5 tobacco products.
- 6 (b) The California electorate, by adopting Proposition 99,
- 7 found that tobacco use is the single most preventable cause of

1 death and disease in America; creates immense suffering and
2 personal loss at a staggering economic cost which Californians
3 have to pay; and is a major burden on state and local governments
4 by requiring them to provide medical care and health services.

5 (c) The California electorate adopted Proposition 99 in an
6 effort to reduce cancer, heart, and lung disease and to reduce the
7 economic costs of tobacco use.

8 (d) The California electorate, by adopting Proposition 99,
9 stated its intent that the proceeds from the surtax on cigarettes and
10 tobacco products imposed under Proposition 99 should, among
11 other things, be used to reduce smoking and other tobacco use
12 among children.

13 ~~(e) Proposition 99 created the Cigarette and Tobacco Surtax~~
14 ~~Products Fund, consisting of six separate accounts, one of which,~~
15 ~~the Health Education Account, is available for appropriations for~~
16 ~~programs for the prevention and reduction of tobacco use,~~
17 ~~primarily among children, through school and community health~~
18 ~~education programs.~~

19 ~~(f)–~~

20 (e) Since the enactment of Proposition 99 there has been a
21 proliferation of smokeless tobacco products, commonly referred
22 to as chewing tobacco and snuff.

23 ~~(g)–~~

24 (f) Since the enactment of Proposition 99, there has been a shift
25 in the use of smokeless tobacco products from adults to children,
26 primarily teenage boys.

27 ~~(h) Proposition 99 imposed a surtax on cigarettes at the rate of~~
28 ~~twelve and one half mills (\$0.0125) for each cigarette distributed.~~
29 ~~Since most individual cigarettes are approximately the same~~
30 ~~weight, the surtax on these tobacco products is, in practice,~~
31 ~~imposed under a weight-based formula.~~

32 ~~(i) Proposition 99 did not specify the rate of the surtax to be~~
33 ~~imposed on tobacco products, other than cigarettes. However,~~
34 ~~Proposition 99 provided that the surtax imposed on other tobacco~~
35 ~~products shall be a rate equivalent to the surtax imposed for~~
36 ~~cigarettes, based on the wholesale cost of these products, as~~
37 ~~determined annually by the State Board of Equalization.~~

38 ~~(j) Under its current practice, the State Board of Equalization~~
39 ~~uses a formula, based on the wholesale costs of tobacco products,~~
40 ~~for determining the equivalent surtax to be applied to tobacco~~

1 ~~products. This practice results in disparate rates imposed on~~
2 ~~similar tobacco products.~~

3 ~~(k) The Legislature does not believe that the California voters~~
4 ~~intended for Proposition 99 to be administratively applied in a~~
5 ~~manner that results in the disparate tax treatment of similar tobacco~~
6 ~~products, especially when this disparate treatment results in a~~
7 ~~lower comparable surtax imposed on smokeless tobacco products.~~

8 ~~SEC. 2. It is the intent of the Legislature that:~~

9 ~~(a) The surtax on smokeless tobacco products should be~~
10 ~~increased in order to discourage the use of these products by~~
11 ~~children.~~

12 ~~(b) The State Board of Equalization establish a formula for~~
13 ~~determining the equivalent rate for the surtax on smokeless~~
14 ~~tobacco products in a manner that increases the surtax on these~~
15 ~~products.~~

16 ~~SEC. 3. Section 30123 of the Revenue and Taxation Code is~~
17 ~~amended to read:~~

18 ~~30123. (a) In addition to the tax imposed upon the~~
19 ~~distribution of cigarettes by this chapter, there shall be imposed~~
20 ~~upon every distributor a tax upon the distribution of cigarettes at~~
21 ~~the rate of twelve and one half mills (\$0.0125) for each cigarette~~
22 ~~distributed.~~

23 ~~(b) Except with respect to smokeless tobacco products~~
24 ~~described in subdivision (c), there shall be imposed upon every~~
25 ~~distributor a tax upon the distribution of tobacco products, based~~
26 ~~on the wholesale cost of these products, at a tax rate, as determined~~
27 ~~annually by the State Board of Equalization, that is equivalent to~~
28 ~~the combined rate of tax imposed on cigarettes by subdivision (a)~~
29 ~~and the other provisions of this part.~~

30 ~~(c) There shall be imposed upon every distributor a tax upon the~~
31 ~~distribution of smokeless tobacco products, including, but not~~
32 ~~limited to, products commonly referred to as snuff and chewing~~
33 ~~tobacco, at a rate, as determined annually by the State Board of~~
34 ~~Equalization, that is equivalent to the combined rate of tax~~
35 ~~imposed on cigarettes by subdivision (a) and other provisions of~~
36 ~~this part.~~

37 ~~SEC. 4. Section 30131.2 of the Revenue and Taxation Code~~
38 ~~is amended to read:~~

39 ~~30131.2. (a) In addition to the taxes imposed upon the~~
40 ~~distribution of cigarettes by Article 1 (commencing with Section~~

1 30101) and Article 2 (commencing with Section 30121) and any
2 other taxes in this chapter, there shall be imposed an additional
3 surtax upon every distributor of cigarettes at the rate of twenty-five
4 mills (\$0.025) for each cigarette distributed.

5 (b) Except with respect to those tobacco products described in
6 subdivision (c), in addition to the taxes imposed upon the
7 distribution of tobacco products by Article 1 (commencing with
8 Section 30101) and Article 2 (commencing with Section 30121),
9 and any other taxes in this chapter, there shall be imposed an
10 additional tax upon every distributor of tobacco products, based on
11 the wholesale cost of these products, at a tax rate, as determined
12 annually by the State Board of Equalization, that is equivalent to
13 the rate of tax imposed on cigarettes by subdivision (a).

14 (c) In addition to the taxes imposed upon the distribution of
15 tobacco products by Article 1 (commencing with Section 30101)
16 and Article 2 (commencing with Section 30121), and any other
17 taxes in this chapter, there shall be imposed an additional tax upon
18 every distributor of smokeless tobacco products, including, but not
19 limited to, products commonly referred to as snuff and chewing
20 tobacco, at a rate, as determined annually by the State Board of
21 Equalization, that is equivalent to the combined rate of tax
22 imposed on cigarettes by subdivision (a).

23 SEC. 5. The Legislature finds and declares that this act
24 furthers and is consistent with the purposes expressed in Article 2
25 (commencing with Section 30121) of Chapter 2 of Part 13 of
26 Division 2 of the Revenue and Taxation Code, as contained within
27 the Tobacco Tax and Health Protection Act of 1988 (Proposition
28 99 of the November 8, 1998, general election), and Article 3
29 (commencing with Section 30131) of Chapter 2 of Part 13 of
30 Division 2 of the Revenue and Taxation Code, as contained in the
31 California Families and Children Act of 1998 (Proposition 10 of
32 the November 3, 1998, general election).

33 SEC. 6. This act provides for a tax levy within the meaning of
34 Article IV of the Constitution and shall go into immediate effect.

35
36 SEC. 2. (a) The office of the Legislative Analyst shall conduct
37 a study of the sales and marketing of cigars and chewing tobacco,
38 over the last 15 years and shall include, but is not limited to, an
39 answer to the following questions:

- 1 (1) Whether the snuff-chewing tobacco product market has
2 changed in the past 15 years.
- 3 (2) Whether there has been an increase in the number of
4 snuff-chewing tobacco brands. If yes, why?
- 5 (3) Whether children are the target for the marketing strategies
6 for snuff-chewing tobacco products.
- 7 (4) Whether there has been an increase in the number of
8 children smoking cigars.
- 9 (5) Whether children are the target for the marketing strategies
10 for cigar smoking products.
- 11 (b) The office of the Legislative Analyst shall report the
12 findings of the study required by subdivision (a) to the Legislature
13 by December 31, 2002.

